

CITY OF OAKLAND



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Police Commission

TO: Lieutenant Angelica Mendoza, Office of Inspector General, Oakland Police Department

FROM: Oakland Police Commission Chair Regina Jackson, Commissioner Jose Dorado, Commissioner Edwin Prather

DATE: July 9, 2019

RE: Officer Involved Shooting of Joshua Ryan Pawlik, IAD and CPRA Case No. 18-0249

[1] BACKGROUND AND PROCEDURAL HISTORY

On April 22, 2019, the Oakland Police Commission (the "Commission") received a report from the Citizens Police Review Agency ("CPRA") containing CPRA's findings and recommended level of discipline to be imposed on individual Oakland Police Department ("OPD") Officers in regards to the Joshua Pawlik matter. The CPRA report made the following conclusions:

	Allegations	CPRA's Findings and Recommended Discipline
1	OPD Officer Brandon Hraiz improperly used lethal force when he shot and killed Mr. Joshua Pawlik	Exonerated
2	OPD Officer Craig Tanaka improperly used lethal force when he shot and killed Mr. Joshua Pawlik	Exonerated
3	OPD Sergeant Francisco Negrete improperly used lethal force when he shot and killed Mr. Joshua Pawlik	Exonerated
4	OPD Officer William Berger improperly used lethal force	Exonerated

	when he shot and killed Mr. Joshua Pawlik	
5	OPD Officer Josef Phillips improperly used force when he used less lethal force on Mr. Joshua Pawlik	Exonerated
6	OPD Sergeant Francisco Negrete failed to properly perform his duties as the DAT Supervisor	Sustained Class 2 Violation – Demotion
7	OPD Lt. Alan Yu failed to properly perform his duties as the Incident Commander	Sustained Class 2 Violation – Demotion
8	OPD Officer Craig Tanaka failed to advise Communications of his rifle deployment	Not Sustained

Thereafter, in relation to OPD IAD and CPRA Case No. 18-0249, the Commission also received Compliance Director Chief Robert Warshaw's February 19, 2019 Addendum to the OPD's Executive Force Review Board Report, his June 12, 2019 Memorandum Re Discipline, and his June 27, 2019 supplemental document to his February 19, 2019 and June 12, 2019 Memoranda. Through those three documents, Chief Warshaw's report made the following conclusions standing in the place of the OPD:

	Allegations	Chief Warshaw's Findings and Recommended Discipline
1	OPD Officer Brandon Hraiz improperly used lethal force when he shot and killed Joshua Pawlik	Sustained Level 1 Violation - Termination
2	OPD Officer Craig Tanaka improperly used lethal force when he shot and killed Joshua Pawlik	Sustained Level 1 Violation - Termination
3	OPD Sergeant Francisco Negrete improperly used lethal force when he shot and killed Joshua Pawlik	Sustained Level 1 Violation - Termination
4	OPD Officer William Berger improperly used lethal force when he shot and killed Joshua Pawlik	Sustained Level 1 Violation - Termination

5	OPD Officer Josef Phillips improperly used force when he used less lethal force on Mr. Joshua Pawlik	Sustained Level 2 Violation - Termination
6	OPD Sergeant Francisco Negrete failed to properly perform his duties as the DAT Supervisor	Sustained Level 2 Violation - Termination
7	OPD Lt. Alan Yu failed to properly perform his duties as the Incident Commander	Sustained Level 2 Violation - 5-Day Suspension
8	OPD Officer Craig Tanaka failed to advise Communications of his rifle deployment	Not Sustained

Section 2.45.130 of the Oakland Municipal Code provides in pertinent part that “A separate Discipline Committee will be established for each Department sworn employee discipline or termination case. The Chairperson of the Commission shall appoint three (3) Commission members to serve on a Discipline Committee, and shall designate one of these three (3) Commission members as the Chairperson. The Discipline Committee shall decide any dispute between the Agency and the Chief regarding the proposed or final findings or proposed or final level of discipline to be imposed on a Subject Officer.”

In accordance with the above-listed conflicting findings and proposed discipline by CPRA and Chief Warshaw, on June 13, 2019, the Commission established a Discipline Committee (the “Committee”) consisting of Commission Chair Regina Jackson, Commissioner Jose Dorado and Commissioner Edwin Prather. Chair Jackson was designated the Chair of the Committee.

The Committee conducted meetings on July 1, 2, 5, 7 and 9, 2019 to consider all of the issues at hand regarding the charge of the Committee as discussed below.

[2] THE CHARGE OF THE DISCIPLINE COMMITTEE

Based on the findings and proposed discipline from CPRA and Chief Warshaw, the Committee identified the following issues before it:

	Allegations	Status
1	OPD Officer Brandon Hraiz improperly used lethal force when he shot and killed Joshua Pawlik	Both the violation and discipline, if any, is to be determined by the Committee

2	OPD Officer Craig Tanaka improperly used lethal force when he shot and killed Joshua Pawlik	Both the violation and discipline, if any, is to be determined by the Committee
3	OPD Sergeant Francisco Negrete improperly used lethal force when he shot and killed Joshua Pawlik	Both the violation and discipline, if any, is to be determined by the Committee
4	OPD Officer William Berger improperly used lethal force when he shot and killed Joshua Pawlik	Both the violation and discipline, if any, is to be determined by the Committee
5	OPD Officer Josef Phillips improperly used force when he used less lethal force on Mr. Joshua Pawlik	Both the violation and discipline, if any, is to be determined by the Committee
6	OPD Sergeant Francisco Negrete failed to properly perform his duties as the DAT Supervisor	The Committee need only consider proposed discipline
7	OPD Lt. Alan Yu failed to properly perform his duties as the Incident Commander	The Committee need only consider proposed discipline
8	OPD Officer Craig Tanaka failed to advise Communications of his rifle deployment	The Committee need not consider

[3] UNIVERSE OF MATERIALS AVAILABLE TO THE COMMITTEE

In order to conduct its review, the Committee received and reviewed: the CPRA Investigative File; the CID Investigative File; the Internal Affairs Division Investigative File, including all video evidence and witness interviews; the Executive Force Review Board (EFRB) Report; the Supplemental IAD report based on the direction of the EFRB; the Imaging Forensics Report; OPD Chief Anne E. Kirkpatrick's Addendum to the EFRB Report; Chief Warshaw's Addendum to the EFRB Report; and the Chief Warshaw's Discipline Determination Memorandum.

The Committee also requested additional clarification and information from CPRA, specifically, Karen Tom, the CPRA Interim Director at the time the Pawlik report was filed. It should be noted that Ms. Tom refused to speak directly to the Committee and would only answer questions through the current Interim Director, Mike Nisperos.

his hand. Upon their arrival at the scene, OPD officers observed Mr. Pawlik and believed him to be sleeping or unconscious and under the influence of alcohol, while grasping a handgun. A Designated Arrest Team (DAT) was established to arrest Mr. Pawlik. The DAT set up a perimeter to clear the area of any citizens and a Bearcat armored vehicle was called to the scene.

Sergeant Negrete created a plan for Mr. Pawlik. Officers would challenge Mr. Pawlik if he woke up prior to the Bearcat's arrival and order Mr. Pawlik to drop the firearm. If the Bearcat was available to Officers, Sergeant Negrete planned that sirens and announcements would be made to Mr. Pawlik. If Mr. Pawlik was not responsive to sirens or announcements, Officers would deploy bean bags to Mr. Pawlik's shins and then potentially tazers to get Mr. Pawlik to surrender or wake up.

Once the Bearcat arrived at 7:04 p.m., the vehicle was parked at an angle next to the sidewalk in front of Mr. Pawlik. Several officers took positions on the Bearcat, using the Bearcat as cover, with their weapons drawn. From this position, Officers engaged with Mr. Pawlik. They attempted to rouse him with loud verbal commands. No sirens or loud noises were used. Instead, Officers yelled to Mr. Pawlik several times to "get your hand off the gun" and "don't move." In coming to consciousness, Mr. Pawlik lifted his head a couple of times and attempted to sit up by using his right elbow. At that point, at approximately 7:06 p.m., Sergeant Negrete and Officers Hraiz, Tanaka, Berger and Phillips fired upon Mr. Pawlik killing him.

The Committee finds that the most essential piece of evidence in its review and analysis to be the video from the Portable Digital Recording Device (PDRD) of OPD Sergeant Webber.¹ The Committee also finds that the PDRD video speaks for itself. From their vantage point on top of the Bearcat, Officers engaged with Mr. Pawlik in an attempt to wake him. Officers shined a bright light on Mr. Pawlik in an apparent attempt to view Mr. Pawlik more clearly, but also to blind and confuse Mr. Pawlik. The PDRD video confirms that Mr. Pawlik's response to Officers attempting to rouse him was to act consistently as a man who was sleeping, unconscious or drunk and being startled and awoken from his slumber. In coming to consciousness, Mr. Pawlik lifted his head more than one time but was unsuccessful in other movements. Mr. Pawlik eventually attempted to sit up by using his right elbow. The PDRD video also confirms that at no time did Mr. Pawlik raise the handgun towards the officers or otherwise in a threatening manner towards Officers. Mr. Pawlik attempted to raise his head and sit up by using his right elbow for leverage. It was this movement that apparently caused Sergeant Negrete and Officers Hraiz, Tanaka, Berger and Phillips to fire upon Mr. Pawlik killing him.

The Committee does not find persuasive Officer testimony that Mr. Pawlik lifted moved or pointed the handgun in a threatening manner towards Officers. The PDRD

¹ The Committee recognizes the foresight of Sgt. Webber who very smartly and appropriately placed his PDRD on top of the OPD's Bearcat armored vehicle prior to the unfolding of the OIS.

video clearly shows that Mr. Pawlik did not lift, move or point the handgun in a threatening manner towards the Officers.

The Committee also finds instructive the PDRD's recording of Officer Berger's statement to Officer Phillips: "If that gun moves... bag him". This statement shows, at minimum, Officer Berger's desire to fire a bean bag at Mr. Pawlik based on any movement, not just threatening movement, or at worst, Officer Berger's desire to shoot a rifle round at Mr. Pawlik killing him. This line of thinking was inconsistent with Sergeant Negrete's plan to deploy bean bags to Mr. Pawlik's shins should Mr. Pawlik continue to be unresponsive.

The PDRD video also clearly shows that Officers provided conflicting statements to Mr. Pawlik such as "don't move" and "move your hand away from the gun". However, the conflicting statements were not controlling as it appears that Mr. Pawlik was not able to comprehend what was being told him after having been awoken from his sleep or unconsciousness.

[5] THE COMMITTEE'S FINDINGS

OPD Officer Brandon Hraiz (Star 9285)

The Committee finds that Officer Hraiz discharged his rifle resulting in the death of Mr. Pawlik. This use of force was out of compliance with OPD policy and the allegation that Officer Hraiz violated MOR 370.27 – 1f Use of Physical Force – Level 1 is SUSTAINED.

The Committee concludes that TERMINATION is the appropriate discipline.

OPD Officer Craig Tanaka (Star 9484)

The Committee finds that Officer Tanaka discharged his rifle resulting in the death of Mr. Pawlik. This use of force was out of compliance with OPD policy and the allegation that Officer Tanaka violated MOR 370.27 – 1f Use of Physical Force – Level 1 is SUSTAINED.

The Committee concludes that TERMINATION is the appropriate discipline.

OPD Sergeant Francisco Negrete (Star 8956)

The Committee finds that Sergeant Negrete discharged his rifle resulting in the death of Mr. Pawlik. This use of force was out of compliance with OPD policy and the allegation that Officer Berger violated MOR 370.27-1f Use of Physical Force – Level 1 is SUSTAINED.

The Committee also finds that Sergeant Negrete failed in his supervision of other officers in violation of MOR 285.00-1 Supervisors-Authority and Responsibilities, Class I. The allegation against Sergeant Negrete in that regard is sustained.

The Committee concludes that TERMINATION is the appropriate discipline.

OPD Officer William Berger (Star 9264)

The Committee finds that Officer Berger discharged his rifle resulting in the death of Mr. Pawlik. This use of force was out of compliance with OPD policy and the allegation that Officer Berger violated MOR 370.27 – 1f Use of Physical Force – Level 1 is SUSTAINED.

The Committee concludes that TERMINATION is the appropriate discipline.

OPD Officer Josef Phillips (Star 9446)

The Committee finds that Officer Phillips discharged his bean bag gun resulting in a use of force against Mr. Pawlik. This use of force was not in compliance with OPD policy and the allegation that Officer Phillips violated MOR 370.27-1h Use of Physical Force – Level 2 is SUSTAINED.

The Committee concludes that TERMINATION is the appropriate discipline.

OPD Lieutenant Alan Yu (Star 8605)

Both CPRA and Chief Warshaw found that the allegation that Lieutenant Yu failed to properly perform his duties as the Incident Commander in violation of MOR 234.00-2 Command Officers – Authority and Responsibilities, Class II as SUSTAINED.

The Committee concludes that a DEMOTION is the appropriate discipline.

